


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 019322-000340	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed Name _____		Application Number 09/934,738 First Named Inventor Ingo Molnar Art Unit 2145	Filed August 22, 2001 Examiner Azizul Q. Choudhury
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>55,130</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 _____ Signature R. Brian Drozd _____ Typed or printed name 919-286-8140 _____ Telephone number December 17, 2007 _____ Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed applicable form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ingo Molnar)	
Serial No.:	09/934,738)	
Filed:	August 22, 2001)	Confirmation No. 9016
)	
Group Art Unit:	2145)	
Examiner:	Aziziul Q. Choudhury)	
)	
Attorney Docket:	019322-000340)	
)	
Title:	EMBEDDED PROTOCOL)	
	OBJECTS)	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant submits that the office actions issued by the Examiner in the present application contain clear errors in the Examiner's rejections as well as omissions of one or more essential elements needed for a *prima facie* rejection under 35 U.S.C. § 102.

The claimed invention improves the performance of data-serving applications by providing a mechanism for dynamic and static protocol objects to be mixed together at a server and included in a dynamic reply to a communication request made by a client application. In effect, static protocol objects (e.g. objects that are static) can be embedded in dynamic replies, along with dynamic protocol objects (e.g. objects that change). If a reply, such as a Web page, requires content, only a small portion of which changes, the reply can be created and sent using mostly cached, static protocol objects, resulting in the reply being sent more quickly and efficiently than is possible with prior-art server systems.

The invention allows a communication server to respond to an application protocol request received from a client application by creating at least one dynamic protocol object to form at least a portion of the reply. The reply is designed to be able to include embedded, static protocol objects. The dynamic protocol object(s) is sent to the client application. Static protocol objects are then retrieved and sent to the client application to complete the reply to the application

protocol request at the client application. The static protocol object or objects are effectively embedded in the dynamic reply.

The Examiner continues to reject all claims under 35 U.S.C. § 102(e) as anticipated by U.S. Patent 6,256,712 to Challenger et al. ("Challenger"). In order for a claim to be anticipated, the cited reference must teach every element of the claim. MPEP 2131. All of Applicant's claims, either directly, or through dependency, have recitations that cannot be found in Challenger.

Nowhere does Challenger discuss *each* of the following claimed limitations: 1) receiving an application protocol request from a client application; 2) having the server respond to this request by sending a portion of the response that changes to the client application; 3) retrieving a part of the response that is static from cache in an operating system kernel; and 4) sending the part that is static to the client application. Rather Challenger only discusses "maintaining updated caches and making consistent updates" to these caches. See Challenger, column 2, lines 53-55.

All of Applicant's claims recite a "request" and a "response that can be displayed as a combination of a portion of the response that changes and a part of the response that is static." Challenger, by contrast, does not even mention a request, let alone discuss responding to requests. Challenger only discusses combining objects into larger objects as an update mechanism for caches. Additionally, Challenger does not mention static or dynamic portions of responses or even Web pages, only complete static or dynamic Web pages.

All of Applicant's claims recite the retrieval of the part of the response that is static from a cache disposed in an operating system kernel. Applicant is also at a loss to find this concept disclosed in Challenger. The portions of Challenger cited by the Examiner discuss either a proxy cache or a processor cache, neither one of which resides in a kernel. A proxy cache resides in user space and a processor cache resides inside the processor hardware. Challenger does not even mention a kernel, let alone an in-kernel cache. The Examiner has suggested that a kernel was "inherent" in Challenger because Challenger mentioned a "computer" and all current computers use a kernel. However, even if this was true, Challenger still does not mention the in-kernel cache or the very specific concept of retrieving a part of a response that is static from a cache disposed in an operating system kernel. For a proper rejection under Section 102, it is not enough for the Examiner to analogize specific claim recitations with portions of the cited

reference in a conclusory fashion. The Examiner has suggested that some unwritten "spirit of the design" behind a cited reference can be used to reject a claim over the cited reference under Section 102. However, for a proper rejection under Section 102, the Examiner must demonstrate that the **identical invention** is "shown in as **complete detail** as contained in the....claim," and that the elements are "arranged as required by the claim...." M.P.E.P. § 2131. The Examiner has failed to meet this burden.

Further, Challenger does not discuss "retrieving the part of the response that is *static*." Challenger is only interested in constantly updating data content that has *changed* and validating WebPages on the server.


For at least the above reasons, the Examiner has failed to show that every element of any claim is present in the art cited. Applicants believe they have responded to all of the concerns raised by the Examiner. As the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* Section 102 rejection, Applicant requests that these claims be allowed to issue.

Respectfully submitted,

Date:

12/14/07

Telephone: (919) 286-8000
Facsimile: (919) 286-8199


R. Brian Drozd
Registration No. 55,130
Moore & Van Allen, PLLC
P.O. Box 13706
Research Triangle Park, NC 27709